

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MONICA BIFALCO,

Plaintiff,

V.

HARVEST BUFFET.

Defendant.

Civil Action No. 14-4207 (MAS) (LHG)

MEMORANDUM ORDER

This matter comes before the Court on Plaintiff Monica Bifalco’s (“Plaintiff”) request for the U.S. Marshals Service to serve a copy of the Amended Complaint and summons upon Defendant Harvest Buffet (“Defendant”). (ECF No. 9.) In its July 7, 2014 Order, the court granted Plaintiff’s request to proceed in forma pauperis but dismissed Plaintiff’s complaint *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted and closed the case. (ECF No. 2.) The July 7, 2014 Order stated that “Plaintiff may file an amended complaint that conforms to the Federal Rules of Civil Procedure no later than thirty (30) days from the entry of this Order.” (*Id.*) Plaintiff did not file an amended complaint within thirty days of the July 7, 2014 Order.


By correspondence dated July 2, 2015, Plaintiff requested that this case be reopened. (ECF No. 5.) By Order dated July 9, 2015, the Court granted Plaintiff's request to reopen the case, and ordered that "Plaintiff shall file an Amended Complaint that conforms to the Federal Rules of Civil Procedure no later than 30 days from the entry of this Order." (ECF No. 6.) Plaintiff filed the Amended Complaint on July 20, 2015. (ECF No. 7.)

Pursuant to § 1915(e)(2)(B)(ii), “the court shall dismiss the case at any time if the court determines that – the action . . . fails to state a claim on which relief may be granted” Plaintiff’s Amended Complaint repeats the same allegations as those contained in her original complaint, which were found insufficient to state a claim for relief. For example, the Amended Complaint does not allege that Defendant had an open employment position at the time that Plaintiff allegedly applied for employment nor does it describe the type of employment Plaintiff allegedly sought or Plaintiff’s qualifications for such employment. Thus, the Court cannot discern a valid or cognizable claim against Defendant.

Accordingly,

IT IS, on this 1st day of December 2015, **ORDERED** that:

1. Plaintiff’s Amended Complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted;
2. Plaintiff may file a second amended complaint that conforms to the Federal Rules of Civil Procedure by January 4, 2016; and
3. If Plaintiff does not file a second amended complaint by January 4, 2016, the Amended Complaint shall be dismissed with prejudice and the case shall be closed.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE